

### **REMARKS**

This Amendment is filed in response to the Office Action mailed March 14, 2008. In this Amendment, claims 1, 14, 29, 40, 52, 66 and 67 are amended; the remaining claims are unchanged. Following entry of this amendment, claims 1-67 shall be pending.

In the Office Action, claims 1-67 rejected on the grounds of nonstatutory obviousness-type double patenting, and claims 1-67 have been rejected based on prior art grounds. For the reasons set forth below, these rejections are hereby traversed.

#### **I. DOUBLE PATENTING**

The Examiner rejected claims 1-67 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over some of the claims of copending Application No. 11/089,207. A terminal disclaimer is being filed herewith to overcome these rejections.

#### **II. REJECTIONS UNDER 35 U.S.C. SECTION 102**

Claims 1, 2, 4, 10-12, 14-17, 19, 25-27, 40, 41, 43, 49, 50, 52-55, 57, 63, and 64 are rejected under 35 U.S.C. Section 102(e) as being anticipated by US 2002/0169473 to Sepetka ("*Sepetka*"). For at least the reasons set forth below, it is submitted that these prior art rejections should be withdrawn and the pending claims allowed.

Without addressing the merits of these rejections, and only to speed prosecution, the Applicant has amended independent claims 1, 14, 40 and 52 to recite an expansile intermediate element capable of expanding at a controlled rate to fill an aneurysm. Support for these amendments is found in paragraphs [0014] and [0024] – [0033]. The Examiner, in making her rejections under § 103, admits that *Sepetka* does not disclose an expansile intermediate element. As such, all of the independent claims, as amended, are patentable over *Sepetka*. Similarly, all of the § 102 rejections of the dependent claims, namely 2, 4, 10-12, 15-17, 19, 25-27, 41, 43, 49, 50, 53-55, 57, 63,

and 64, have been overcome. It is respectfully requested that all of the § 102 rejections be withdrawn in light of the amendments made.

### III. REJECTIONS UNDER 35 U.S.C. SECTION 103

Claims 3, 5-9, 13, 18, 28, 20-24, 28-39, 42, 44-48, 51, 56, and 58-62 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over *Sepetka* in view of US 7,066,904 to Rosenthal ("*Rosenthal*"). For at least the reasons set forth below, it is submitted that these prior art rejections should be withdrawn and the pending claims allowed.

The Examiner, in making these rejections, states that *Rosenthal* provides the claimed elements that *Sepetka* fails to disclose. The Examiner characterizes *Rosenthal* as disclosing an expansile polymeric material element that is a hydrogel. The Applicants respectfully disagree.

Rosenthal discloses a device directed to drug delivery. The drug delivery medium is a balloon coated with a hydrogel. The hydrogel, when exposed to a liquid having a designated characteristic, either expands or contract, thereby releasing a drug. The balloon is a vehicle that delivers the hydrogel coating to the target area. The balloon is inflated to put the hydrogel in proximity to the vessel walls.

Thus, the Applicant respectfully points out the distinction between a coating on a balloon, and an intermediate expansile element, as claimed. The claimed device includes an element, as opposed to a coating (the *Rosenthal* coating) on an expansile element (the *Rosenthal* balloon). In other words, if the *Rosenthal* coating were an expansile element as claimed, the balloon would be unnecessary to provide the expansile property. An expansile element would grow, without the assistance of a balloon, to contact the targeted surfaces. Hence, adding the coating of *Rosenthal* to *Sepetka* falls short of providing an expansile element.

Additionally, in light of the differences between an element and a coating, one skilled in the art would not be motivated to look to *Rosenthal* for expansile materials

used to make the intermediate element of *Sepetka*. If it were determined that an intermediate expansile element is desired, one skilled in the art would not seek out materials used in coatings in order to construct an element.

Moreover, independent claims 29, 66, and 67 have been amended to recite an expansile intermediate element capable of expanding at a controlled rate to fill an aneurysm. The *Rosenthal* device does not disclose a hydrogel that expands at a controlled rate. Once the *Rosenthal* hydrogel is introduced into a triggering environment, the hydrogel begins to expand. Considering the application used by *Rosenthal*, namely, a coating on a balloon used for drug delivery, a controlled expansion rate is unnecessary. Indeed, because a balloon expanded in a blood vessel necessarily blocks the blood vessel, one skilled in the art would realize that the *Rosenthal* device would benefit by a hydrogel that expands and releases the drugs as quickly as possible.

The claimed device, on the other hand, utilizes a hydrogel to fill an aneurysm. It would thus be undesirable to use a hydrogel that expands quickly after being introduced into a triggering environment. A hydrogel that expands too early would be difficult to introduce into the aneurysm.

Because neither *Sepetka* nor *Rosenthal* disclose an expansile intermediate element capable of expanding at a controlled rate to fill an aneurysm, it is submitted that all of the independent claims, as well as dependent claims depending therefrom, are patentable over *Sepetka* in view of *Rosenthal*. Withdrawal of the rejections under § 103 is therefore respectfully requested.

Applicant: George Martinez  
Serial No.: 10/631,981  
Art Unit: 3731

PATENT  
Atty Docket: 388700-612-11-PA

### CONCLUSION

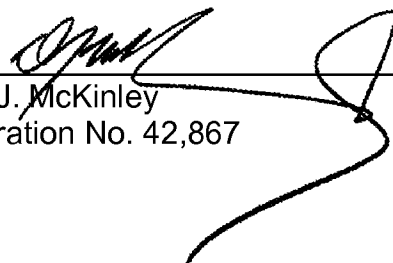
In view of the foregoing, it is submitted that pending claims 1-67 are now in condition for allowance. Hence an indication of allowability is hereby requested.

If for any reason direct communication with Applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is cordially urged to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any additional fee which may be required in connection with this Amendment to deposit account No. 50-2809.

Respectfully submitted,

Dated: July 31, 2008

  
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